to evaluate the evidence of Lim Ah Huat as it is difficult to estimate correctly the credibility of this witness from the printed evidence. In my opinion I should not in this case without the advantage of seeing the witness come to the conclusion that the witness was speaking the truth.

For these reasons I would order a re-trial in this case.

Tan Ah Tah F.J.: I agree.

Ambrose J.: I agree.

Re-trial Ordered.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

TAN TIAN QUEE v. KUPPUSAMY

[O.C.J. (Choor Singh J.) May 21, 1966]

[Singapore — Suit No. 1038 of 1965]

Contract — Sale of land — Agent — Ostensible authority — Breach of contract.

The defendant had given a written option through his agent for the sale of his land. The option did not specify vacant possession but it was alleged that the agent had led the plaintiff to believe that the land was sold with vacant possession. The option was accepted by the plaintiff. The defendant alleged that subsequently a formal agreement for sale without vacant possession was entered into but this was denied by the plaintiff. As completion did not take place, the plaintiff claimed specific performance or damages for breach. The defendant counterclaimed for the payment of the deposit to him, alleging that it was the plaintiff who had failed to complete.

Held: (1) the agent had no ostensible authority to sell the land with vacant possession and as there was no genuine consensus between the parties no contract was entered into by the parties when the option was exercised;

(2) on the evidence there was a formal agreement for sale without vacant possession and as the plaintiff had failed to complete, he was in breach of contract and the defendant was entitled to payment of the deposit.

Case referred to:—

(1) *Attorney-General for Ceylon* v. *A. D. Silva* [1953] A.C. 461.

CIVIL SUIT.

L. Rayner for the plaintiff.

J. B. Jeyaretnam for the defendant.

Cur. Adv. Vult.

Choor Singh J.: In this action the plaintiff claims specific performance of a contract for the sale of land, or, alternatively, damages for breach of contract.

The plaintiff pleads as follows. On the 22nd February, 1963, the defendant appointed one Nagalingam as his agent to sell his property known as 81 Kings Road, Singapore, at any time between the 22nd February and the 3rd March, 1963. By his letter of the 23rd February, 1963, Nagalingam offered to sell the property to the plaintiff with vacant possession at the price of $1 per square foot. On or about the 23rd February, 1963, the plaintiff orally accepted the offer. The defendant declined and refused to perform the contract formed by the acceptance of the offer. The plaintiff has at all material times been ready and willing to perform his obligations under the contract.

The defendant admits that he appointed Nagalingam as his agent to sell the property in question. But he alleges that he had no knowledge of Nagalingam's letter of the 23rd February, 1963, that in offering vacant possession Nagalingam was acting outside the scope of his authority, and that if Nagalingam's offer was accepted by the plaintiff, the defendant is not bound thereby.

Nagalingam, who could have thrown much light on the terms of the sale, died on the 27th March, 1963.

The issue that I have to decide is whether or not a binding contract for the sale of the property with vacant possession was entered into by the parties on the 23rd February, 1963. The plaintiff's evidence on this issue is as follows. On the 15th February, 1963, Nagalingam came to his office and showed him an option signed by the defendant which was in the following terms:—

"Mr. I. Modr. Nagalingam,
Singapore.

I hereby give you option to sell my freehold land known as No. 81 Kings Road Singapore (Lot 33-8) at the rate of dollar one ($1.00) per square foot. Vacant possession would be given to the buyer within 60 days from date of paying the initial deposit to my lawyers.

This option shall hold good for 10 days from the date of this chit, 8th instant."

The plaintiff offered Nagalingam 90 cents per square foot. The plaintiff believed that he would get vacant possession because the option mentioned vacant possession. The same afternoon Nagalingam informed the plaintiff that the price offered by him was not acceptable to the defendant. Thereupon the plaintiff raised his offer to 95 cents per square foot and Nagalingam promised that he would convey this offer to the defendant. Nagalingam wrote a letter to the plaintiff on the 18th February, 1963, and another on the 20th February, 1963, stating that the defendant was not willing to accept anything less than $1 per square foot. On the 21st February, 1963, Nagalingam informed the plaintiff that the option had expired but he would have it renewed if the plaintiff would buy the property at $1 per square foot. The plaintiff said he would. On the 23rd February, 1963, the plaintiff received a letter from Nagalingam enclosing the old option

and a new one. The letter reads as follows:—

23rd February, 1963.

Dear Kim Yam,

Re 81 Kings Road
Lot 33-8

I enclose herewith option received today for you to exercise it. The area is according to the grant. Vacant possession will be given within 60 days from the date of exercising the option. The amount payable to City Council for making road is $5,200. I also enclose the previous option for your information.

The Deeds will be produced to your lawyers on exercising the option. I strongly advise you to exercise the option. The land in the locality is going up daily.

Thanking you.

P.S.

The owner has made an agreement with City Council including int. $6000 to pay in 5 years time by instalments agreement will be produced to you. This sum will be paid by the owner on completion."

The new option, which I shall call the second option, was as follows:—

22nd February, 1963.

Mr. Modr. Nagalingam,
306 Room No. 6 Cecil Street,
Singapore.

OPTION

This option is given to Mr. Modr. Nagalingam to sell my freehold property known as No. 81 Kings Road (Lot 33-8) at the rate of dollar one ($1.00) per square foot. The option stands good for 10 days from the date of this note terminating on the 3rd March, 1963."

On receipt of Nagalingam's letter of the 23rd February, the plaintiff rang him up and informed him that he accepted the offer of $1 per square foot with vacant possession. The plaintiff then telephoned his solicitors, Messrs. Hilborne, Chung & Co., and told them to act for him in the purchase of this property at $1 per square foot with vacant possession and sent them all the letters received from Nagalingam together with the two options. In the first week of March, 1963, the plaintiff was requested by his solicitors to pay a deposit of ten per cent of the purchase price, which he did. In the middle of March the plaintiff went to the office of his solicitors and saw their chief clerk, Sabapathy, who showed him a draft agreement (Exhibit P.7). Sabapathy informed the plaintiff that the defendant did not approve of the draft agreement because of the "vacant possession" clause and that the defendant could not give vacant possession.

The defendant's evidence is as follows. On the 8th February, 1963, he gave an option to Nagalingam to sell the abovementioned property with vacant possession at the price of $1 per square foot. The option was to expire on the 17th February. On the 13th February he informed his children and his son-in-law, Ragunathan, about the option and told them that his son, Sundrarajah, who was occupying the property, would have to vacate it because he was selling it with vacant possession. Two days later Ragunathan informed him that Sundrarajah refused to vacate it. The defendant became worried because the option which he had given to Nagalingam mentioned vacant possession. Fortunately for him the option was not exercised. He decided to sell the property without vacant possession. He then gave a second option to Nagalingam in which he made no mention of vacant possession. On the night of the 22nd February, Nagalingam telephoned him and enquired why he had not mentioned vacant possession in the second option. The defendant replied that the reason for it was that his son had refused to vacate the property. On the 24th February, Nagalingam informed him that he had a buyer for the property and advised him to hand the title deeds to Messrs. Hilborne, Chung & Co. immediately upon his receiving their letter of acceptance. On the 1st March, 1963, the defendant received the letter of acceptance from Messrs. Hilborne, Chung & Co., and the next day took the title deeds to their office and handed them to their chief clerk, Sabapathy. He told Sabapathy that a formal contract for sale must be signed. On the 11th March, 1963, the defendant saw Sabapathy and enquired if the contract was ready for signature. Sabapathy asked him whether he could give vacant possession. He replied that he could not give vacant possession and that he had not agreed to give vacant possession. He added that his son who occupied the property had refused to vacate it and that was why the option did not mention vacant possession.

It is submitted by counsel for the plaintiff that both options should be read together; that the first option clearly mentioned vacant possession; that although the second option did not mention vacant possession, it should be considered together with the first option because it was in fact a renewal of the first option; and that the property was therefore sold with vacant possession. I do not accept this submission. In my view, the first option expired on the 17th February, 1963, and the second option which was given on the 22nd February, 1963, was clearly a separate and distinct option which made no mention of the first option. The only offer that was available for acceptance was the offer contained in the second option and this offer made no mention of vacant possession. The property was therefore not sold with vacant possession.

The next submission of counsel for the plaintiff is that even if vacant possession was not an express term of the contract it was implied in the contract. The question, as I see it, is whether both the plaintiff and defendant intended such a term to be a part of the agreement between them. The defendant clearly did not intend such a term to be a part of the offer which was the

subject of the second option. It cannot be said, therefore, that both the plaintiff and defendant intended such a term to be a part of the agreement. The submission, therefore, fails.

The next submission of counsel for the plaintiff is that the defendant authorised Nagalingam to act for him in the sale of the property; that Nagalingam was therefore the agent of the defendant; that in his letter of the 23rd February forwarding the two options to the plaintiff, Nagalingam stated quite clearly that vacant possession would be given; that where an agent is clothed with ostensible authority no private instructions prevent acts within the scope of that authority from binding his principal and that the defendant was therefore bound to give vacant possession.

My view regarding this submission is as follows. Nagalingam's authority to sell the property had been reduced into writing and it was contained in the second option which made no mention of vacant possession. In that option the defendant did not hold out Nagalingam as an agent having authority to sell with vacant possession. The second option was not an extension of the first option. The agent here was a professional land broker and was the defendant's agent with very limited authority. In the absence of definite evidence to the contrary it cannot be assumed that he had authority to offer vacant possession when the document which authorised him to sell the property made no mention of vacant possession.

In my opinion, by offering vacant possession, Nagalingam was clearly acting outside the scope of his authority which was laid down in the second option. As was observed by Mr. L. M. D. de Silva in delivering the judgment of the Privy Council in *Attorney-General for Ceylon* v. *A. D. Silva.*[1]

> "....All "ostensible" authority involves a representation by the principal as to the extent of the agent's authority. No representation by the agent as to the extent of his authority can amount to a "holding out" by the principal...."

The defendant in this case did not authorise Nagalingam in the second option, which is the only option that matters, to sell the property with vacant possession. There was no representation by the defendant that Nagalingam had authority to sell the property with vacant possession. Nagalingam himself did not represent that he had authority to sell with vacant possession. Even if he had made such a representation, that would not amount to a holding out by the defendant. In my view Nagalingam was not clothed with ostensible authority to sell the property with vacant possession.

In my judgment, no contract was entered into by the parties on the 23rd February, 1963. It is well settled law that no contract can be formed if there is no correspondence between the offer and the acceptance. In the present case the second option is silent on the question of vacant possession. The defendant said nothing about giving vacant possession in the second option because he found that he could not give vacant possession. The offer which was the subject of the second option did not include vacant possession. The plaintiff on the other hand was led to believe by Nagalingam that the property was offered for sale with vacant possession and he agreed to purchase it on that basis. There was in fact no genuine consensus between the plaintiff and the defendant. Therefore no contract came into existence.

I now turn to the counterclaim. The defendant pleads that a formal contract was signed by both parties on the 9th April, 1963, at the office of Messrs. Hilborne, Chung & Co. for the sale of the property to the plaintiff at $1 per square foot without vacant possession, and counterclaims for the payment of the deposit of $2,700 paid by the plaintiff and held by the plaintiff's solicitors. The plaintiff denies that such a contract was ever signed and disputes the counterclaim. The defendant's evidence on this issue is as follows. On the 6th April, 1963, Sabapathy, the chief clerk of Messrs. Hilborne, Chung & Co., informed him that the sale agreement was ready for signature. The defendant told Sabapathy that he would call on him on the 9th April at 2 p.m. to sign the agreement. On the 9th April the defendant went to Sabapathy's office. He saw the plaintiff there and was introduced to him by Sabapathy. Just then Mr. Hilborne came out of his office and saw both parties. Mr. Hilborne told Sabapathy that he could carry on and then left the office. Sabapathy showed the defendant the agreement which was to be signed. The defendant read it and found that it provided for vacant possession to be given on the 30th June, 1963. He objected strongly to the vacant possession clause. It was then agreed between the parties to delete that clause. The clause was cancelled by drawing a line across it and the plaintiff and the defendant both initialled the cancellation. The agreement provided for completion on the 30th April, 1963. The plaintiff and the defendant signed two copies of the agreement and the defendant asked Sabapathy for a copy. Sabapathy said that it was unnecessary for the defendant to have a copy as his firm was acting for both parties. Sabapathy added that the defendant would get his money on the 30th April. The plaintiff agreed to settle the road metalling bill and asked the defendant to let him know the actual amount due to the Public Works Department. The plaintiff stated that he would pay the bill first and the amount could be adjusted later on. The defendant thanked him

and went home. The next day he wrote to the Public Works Department as follows:—

"10th April, 1963.

The Accountant,
P.W.D. Singapore.

A/C 2703 Metalling Charges, Empress Road

I intend settling the balance of the above account within the next thirty days. May I please be informed of the balance still due to be paid.

My record shows that I made an initial payment of $124 on 4.4.62 and 12 subsequent payments including the last remittance on 6.4.63."

The defendant received the following reply:—

"11th April, 1963.

Mr. Doraisamy Kuppusamy,
22 Hillside Drive,
Singapore.

Dear Sir,

Metalling Empress Road Lot 33-8

As requested in your letter dated 10.4.63, I append below the particulars:—

	Principal	*Interest*
Interest May 1962 to April 1963	$5,139.00	$272.88
Less Repayments	1,144.00	153.00
As at 11.4.63	$3,995.00	$119.88

I shall be obliged to receive your crossed cheque for $4,114.88 before 30.4.63. However, if you wish to pay next month please add $19.98 being interest for May 1963 (6% on $3,995 for one month).

Yours faithfully,

Sgd. Cheah Chye Hong
for Accountant, P.W.D.
Singapore."

The defendant took the letter received from the Public Works Department to Sabapathy on the 12th April and handed it to him with a request to arrange payment. Sabapathy agreed to see the plaintiff about it. On the 30th April the defendant went to Sabapathy's office and asked him if the Public Works Department bill had been paid. Sabapathy replied that it had not. The defendant then asked Sabapathy for payment of the purchase price as completion of the contract was to take place on that day. Sabapathy replied that he was waiting for a reply from the defendant's son. The defendant did not know that Sabapathy had written to his son. On the 12th April, Sabapathy had asked him for his son's address and the defendant had given him two addresses. Sabapathy asked him to wait for some time and said he would arrange payment of the purchase price to be made to him. The defendant agreed and went home. The defendant telephoned Sabapathy on three occasions and enquired if the purchase price had been paid. On each occasion Sabapathy merely asked the defendant to wait for a few more days. On the 20th May the defendant saw Sabapathy at his office, demanded payment, and asked to see the agreement for sale. Sabapathy produced the agreement and the defendant saw that the date of completion in the agreement had been altered from 30th April to 30th June. The word "April" had been erased and the word "June" had been typed in its place. The defendant protested and said that the alteration was criminal. Sabapathy asked the defendant to wait for two more days. The defendant went home and wrote the following letter:—

"20th May, 1963.

Messrs. Hilborne, Chung & Co.,
Malacca Street,
Singapore.

Re No. 81 Kings Road, Singapore.

In inviting an attention to my letter of the 25th March, 1963, I have to inform you that when the contract for sale was signed on the 9th April, 1963, I was given to understand that the conveyancing would be completed by the 30th April 1963 and that the payment of the purchase price for the property would be effected immediately. Up till now payment has not yet been made in spite of my repeated reminders to your clerk Mr. A. R. Sabapathy.

In view of the disappointment to which I have already been subjected to, may I as a last resort, request the full settlement of the agreed price before the 25th May, 1963, failing which kindly return the title deeds handed to you on the 2nd March, 1963. After the 25th instant I shall consider the contract of sale as null and void and the deal as cancelled."

The defendant sent this letter by registered post but did not receive any reply. On the 28th May he saw Messrs. Donaldson & Burkinshaw and placed the matter in their hands.

The plaintiff's evidence on this issue is as follows. On the 9th April he was called to the office of Messrs. Hilborne, Chung & Co. He went there and saw Sabapathy. Later the defendant came in and Sabapathy introduced him to the defendant. That was the first time he met the defendant. The defendant raised the question of vacant possession and said that his son was occupying the property. Sabapathy added that the defendant's son was living there free of rent. The defendant never stated that he had agreed to sell the property without vacant possession. The defendant stated that he was going to India in a hurry and could not give vacant possession until his return in June. The defendant stated further that he wanted to purchase a property in Katong and wanted urgently the full amount of the purchase price. The plaintiff informed the defendant that he would give him up to $20,000 as an advance and would pay the balance when he was given vacant possession. The defendant informed the plaintiff that he would let him know if he would have $20,000 first. The defendant stated that he was not on talking terms with his son and requested Sabapathy to write a letter to his son telling him that his father had signed an agreement to sell the property with vacant possession and that he should therefore vacate

the property. There was no truth in the allegation that he signed a contract on the 9th April. He did not see the defendant sign any contract on that day. It was not true that somebody had destroyed that contract. There was no agreement that the sale would be completed on the 30th April.

Sabapathy's evidence on this issue is as follows. The plaintiff and the defendant were both called to his office on the 9th April, 1963, for a conference. The plaintiff arrived first and then the defendant arrived. He introduced the defendant to the plaintiff. The plaintiff raised the question of vacant possession. The defendant stated that he could not give vacant possession. The defendant stated further that he was going to India and he needed money. He wanted the plaintiff to pay the full purchase price as he wished to purchase a property in Katong. The plaintiff stated that he could not give the full purchase price but was willing to pay the defendant $20,000 and would pay the balance when vacant possession was given. It was agreed that completion should take place on the 30th June, 1963. The plaintiff agreed to completion in June because the defendant stated that he would try to get vacant possession by June. The defendant asked him to write a letter to his son informing him that his father had entered into a contract to sell the property with vacant possession and requesting him to vacate the property. He wrote a personal letter to the defendant's son. The object was to get defendant's son to vacate the property. It was not true that a contract of sale was signed on the 9th April, 1963. It was not true that the date of completion in that contract was altered from the 30th April to the 30th June. It was not true that he had destroyed or concealed such contract. There was no such contract.

Mr. Hilborne could not throw much light on what happened in his office on the 9th April but he believed that no formal contract was signed on that day because it was the practice of his office for such contracts to be signed before an advocate and solicitor. If any contract was signed by the plaintiff on the 9th April, it was without consulting him.

There are only three persons who know whether or not a contract was in fact signed by the parties on the 9th April, 1963, and they are the plaintiff, the defendant and Sabapathy. But apart from their evidence there is circumstantial evidence which throws considerable light on this matter. First, there is the letter of the 11th April, 1963, written by Messrs. Hilborne, Chung & Co. to the Chief Planner in the following terms:—

" 11th April, 1963.

The Chief Planner,
City Council,
Singapore.

Dear Sir,

Land at Kings Road

We act for Madam Chew Hoo who is the purchaser of land at Kings Road comprised in Lot 33-8 of Mukim II.

We have been asked by her to inform you that she has entered into a contract to purchase the said land which will shortly be conveyed to her."

Madam Chew Hoo is the mother-in-law of the plaintiff and he desired the conveyance to be made out in her name. The letter is written two days after the 9th April, 1963, the day on which, according to the defendant, a formal contract was signed. In my view, the use, on the 11th April, 1963, of the expression "has entered into a contract" supports the defendant's contention that there was a contract signed on the 9th April, 1963. The expression "will shortly be conveyed to her" supports the defendant's contention that the date of completion in the formal contract was 30th April.

Then there is the letter of the 18th April, 1963, written by Sabapathy to the defendant's son which is as follows:—

"Further to our telephone conversation sometime in last month regarding 81 Kings Road, Singapore, I shall be much obliged if you will kindly call at my office on any day in next week and if not convenient for you, would you please ring me as I would like to have a talk with you about the said property, as your father and the purchaser have already signed the contract.

Regret very much for the inconvenience caused in this matter."

In this letter Sabapathy categorically asserts that the plaintiff and the defendant "have already signed the contract". The plaintiff alleges that this letter was written at the defendant's request. Sabapathy says that the statement "your father and the purchaser have already signed the contract" was a false statement which he made at the request of the defendant in order to assist him. The defendant denies making such a request. Sabapathy in this letter states not that the plaintiff and the defendant have entered into a contract but that they have signed the contract. In my opinion Sabapathy stated the truth in this letter and the evidence he gave in court at the trial of this suit was untrue. His letter clearly supports the defendant's contention that a formal contract was signed on the 9th April, 1963.

Then there is a letter the defendant wrote to the Public Works Department on the 10th April, 1963, enquiring about the amount due to that department in respect of the road metalling charges. This letter supports the defendant's story that on the 9th April, 1963, when the formal contract was signed, the plaintiff agreed

to pay straightaway the road metalling bill of the Public Works Department.

The last relevant letter is the defendant's letter to Messrs. Hilborne, Chung & Co. dated the 20th May, 1963. In my opinion this is very important. In it the defendant categorically asserts that a formal contract was signed on the 9th April, 1963, and that the date of completion in that contract was the 30th April, 1963. And this letter written by the defendant to his own solicitors and sent by registered post received no reply at all. Was the defendant, as far back as May, 1963, fabricating false evidence by putting on record that a contract was signed on the 9th April, 1963, or was he asserting the truth? Furthermore, both the plaintiff and Sabapathy say that, on the 9th April, 1963, it was agreed between the parties that completion was to take place on the 30th June, 1963, and that the defendant was to give vacant possession upon completion. If, indeed, such an agreement was reached, why was a formal agreement not signed on that day setting out those terms? After all, the parties did intend to sign a formal agreement and Sabapathy admits that he had prepared a draft agreement.

In my view, when the evidence of the plaintiff, the defendant, and of Sabapathy is considered in the light of the correspondence to which I have referred, one is left in no doubt at all as to where the truth lies. Sabapathy on his admission is quite capable of telling a lie and is a totally unreliable witness. As for the plaintiff, in my view, he is not speaking the truth when he says that no formal contract was signed on the 9th April, 1963. He did not impress me as a truthful witness and I therefore reject his evidence. The defendant impressed me as a truthful witness. I accept his evidence that a formal contract was signed on the 9th April, 1963, in which the date of completion was set out as the 30th April, 1963.

Counsel for the plaintiff submits that the defendant was not a truthful witness because the defendant maintained that he saw Mr. Hilborne in his office in March, 1963, whereas Mr. Hilborne's note of the interview shows that the interview took place on the 8th April, 1963. In my view, the date on which the interview took place is not of much importance and the defendant could very well be mistaken as to the date. What is important is what took place at that interview and Mr. Hilborne admitted under cross-examination that he was not prepared to deny the defendant's version of the interview.

In the light of the evidence before me, I hold that the plaintiff and the defendant signed a formal contract on the 9th April, 1963, whereby the plaintiff agreed to purchase from the defendant the property in question at the price of $1 per square foot without vacant possession and the completion was to take place on the 30th April, 1963. The sale was not completed on the 30th April, 1963, and on the 20th May, 1963, the defendant gave notice making time the essence of the contract. In my view, the five days' notice was under the circumstances reasonable because according to Sabapathy all that was required to be done was to draft a conveyance and engross it and this according to him would have taken only two days. After the 25th May, 1963, the plaintiff was, in my opinion, in breach of contract and the defendant therefore succeeds on his counterclaim.

In the result, the plaintiff's claim against the defendant is dismissed with costs the deposit of $2,700 in the hands of the plaintiff's solicitors is ordered to be paid out to the defendant; and the plaintiff is ordered to pay the defendant's costs of the counterclaim.

Claim dismissed; Judgment for the defendant on the counterclaim.

Solicitors: *L. Rayner; Donaldson & Burkinshaw.*

CHAN TIAN HOCK v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi J.) May 23, 1966]

[Muar — Criminal Appeal No. 12 of 1965]

Road Traffic — Permitting person not holder of licence to drive a motor vehicle — Meaning of "permit" — Road Traffic Ordinance, 1958, s. 146.

The appellant appealed against his conviction on charges of permitting an unlicensed person to drive a motor vehicle and permitting the vehicle to be used without a third party insurance in force. The facts were that the appellant took his car to a motor mechanic for repairs. He left the car there and removed the key. Subsequently the mechanic was found driving the motor car on a public road. The mechanic did not have a driving licence.

Held: the learned magistrate erred in drawing the inference in this case that the appellant had failed to forbid the mechanic to drive the car. There was no evidence that the appellant had given permission to the mechanic to drive the car and there was evidence in the fact that the key of the car had been removed by the appellant to rebut any inference that general permission to drive the car had been given to the mechanic.

Case referred to:—

(1) *McLeod (Houston)* v. *Buchanan* [1940] 2 All E.R. 179.

CRIMINAL APPEAL.

M. S. Miranda for the appellant.

Tunku Zaid bin Tunku Zakaria (Deputy Public Prosecutor) for the respondent.

Azmi J.: This is an appeal against the conviction of the appellant on the following two charges: